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Summary record of the 2521st meeting

Held at Headquarters, New York, on Tuesday, 25 March 2008, at 10 a.m.

Chairperson: Mr. Rivas Posada

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The meeting was called to order at 10.15 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Third periodic report of Panama
(CCPR/C/PAN/3; CCPR/C/PAN/Q/3 and Add.1) (*continued*)

1. *At the invitation of the Chairperson, the members of the delegation of Panama took places at the Committee table.*

2. **The Chairperson** invited the delegation to address any points not covered in response to the questions put by the Committee at the previous meeting.

3. **Mr. Castillero Correa** (Panama), addressing the question of refugees, said that in the 1970s a number of persons had fled the conflict in Central America and taken refuge in Panama, where they had subsequently become integrated, in many cases through marriage. Legislation had been drawn up, in consultation with the Office of the United Nations High Commissioner for Refugees (UNHCR), primarily for those with 30 years' standing as refugees, but also including those who had been recognized as such for only 10 years, so as to regularize their status. Expulsion was not provided for under that law: repatriation was exclusively voluntary. No specific records were immediately available on naturalizations, but written information would be provided to the Committee at a later stage. As yet there had been no decision on the question whether the requirements for naturalization spelled out in article 12 of the Constitution, in particular in matters of health, morals, security and disability, amounted to discrimination under the Covenant, but an amendment to the Constitution might well be envisaged, particularly in the light of the Committee's discussions. Both the Family Code and the Labour Code offered protection to pregnant women. Further research would be undertaken in order to determine whether there were any specific discriminatory acts against pregnant women, particularly in employment.

4. Turning to the question of the Truth Commission, he said that out of 110 documented cases, 67 had already been the subject of judicial proceedings, while it had not been possible to initiate such proceedings in the other 43. To enable it to continue with its work, a special investigator on enforced disappearances had been appointed and provided with the necessary budget and support. There was no statute of limitations in such cases, nor for crimes against humanity or acts of terrorism.

5. With regard to the rights of indigenous people, Panama was studying the possibility of ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO). Five areas, known as *comarcas*, had been designated for the indigenous population, in one third of the national territory. The executive was currently studying a framework act on their ancestral land rights. The National Civil Status Registry, established in 2006, guaranteed related human rights, including those recognized by international conventions ratified by Panama, while local authorities were required by law to assist the country's auxiliary registrars in ensuring the registration of births and marriages.

6. **Mr. Sandoval** (Panama), taking up the question of torture, stressed that it was forbidden by law and that information obtained by such means was not admissible as evidence in the courts. As for pretrial detention, the new Code of Criminal Procedure, which was an essential part of the ongoing reform of the criminal justice system, would offer judges alternative measures in order to lessen the burden on the courts. Under the current Criminal Code, criminal legislation was only to be applied when there were no other means of social control. Regarding the question of the investigation and punishment of prison employees accused of practising torture, the national police were required to discharge their duties professionally; they must not engage in torture of other cruel, inhumane or degrading acts. Any police officer accused of such acts was liable to punishment and even dismissal following a two-tier investigation. As for preventive detention in Police custody, it was allowed for up to 24 hours, for non-criminal offences and only in exceptional cases. Persons detained under transitory arrangements must be transferred for due legal process; prosecutors had received instructions to that effect. Articles 827 and 828 of the Administrative Code had been repeated by Act No. 22 of 2005 and therefore could not serve to justify detention.

7. In response to the question concerning habeas corpus, he acknowledged the delays in granting that constitutional remedy and the need to make the overloaded Panamanian system of justice more effective. A number of additional judicial officers had recently been appointed in order to reduce the backlog,

while the Supreme Court had recently ruled that all habeas corpus applications must be processed within one week. In the defence of persons before the courts, officially appointed counsel offered the same guarantees as private lawyers and were fully competent to address the charges. Moreover, provisions were in place to increase their number and to provide them with greater technological support. A programme of conflict management was also part of the process of judicial reform initiated by the President of the Republic; dispute settlement procedures were accordingly being put in place, with funding from the Inter-American Development Bank. He undertook to provide the Committee with a general description of the operation of the system of justice, as well as the requested statistical data.

8. **Sir Nigel Rodley** said he had understood that, under the new Criminal Code, a doctor could not refuse to perform an abortion on grounds of conscientious objection, but the written replies (CCPR/C/PAN/Q/3/Add.1) seemed to suggest the opposite. He requested clarification. It would also be useful to have statistical and other information about abusive treatment of prisoners and measures taken to prevent it. Lastly, he asked whether the State party was contemplating ratification of the Optional Protocol to the Convention against Torture.

9. **Mr. Tuñon** (Panama) said that, following high-level meetings in the Ministry of Foreign Affairs on the benefits of ratification of that Optional Protocol, the issue had been referred to the Treaty Department, which was initiating the process of consultation that should eventually culminate in its ratification.

10. **Ms. Rodríguez** (Panama), in clarification of article 142 of the new Criminal Code, said that notwithstanding a doctor's right to state his or her conscientious objection on moral, religious or any other grounds in order to be exempted from participation in an abortion procedure, such exemption did not preclude another health professional from performing the abortion in question.

11. **The Chairperson** invited the delegation to address questions 14-24 on the list of issues.

12. **Mr. Tuñon** (Panama), responding to question 14, referred to article 52 of the Civil Status Registry Act, which laid down the conditions for authorization to perform wedding ceremonies. Such authorization had been extended to the representatives of a number of recognized religious denominations, in addition to the appropriate State authorities. Turning to question 15, he said that there was freedom of religion in Panama, subject to the requirements of Christian morality and public order. There was consequently no incompatibility with article 18 of the Covenant. As for catechism classes, referred to in question 16, it was not true that they were compulsory in State schools. Such classes were not part of the curriculum but were provided by the Catholic Church; attendance was voluntary.

13. **Mr. Caballero** (Panama), in answer to question 17 on the list of issues, stressed that the Panama Constitution fully guaranteed the rights of freedom of assembly and freedom of expression. However, in Panama, the right of third persons to free passage was regularly impaired by public demonstrations blocking major roads that were often extremely violent and involved acts of vandalism. In such cases, the police was responsible for securing third persons' right of free passage, which they first attempted to do through dialogue with the protesters and, as a last resort, through the legitimate use of force, in accordance with national and international standards.

14. **Mr. Gómez** (Panama), also responding to question 17, said he wished to emphasize that the police crowd control units responsible for securing third persons' right of passage during public demonstrations were trained by multidisciplinary teams to handle such situations while observing the principles of tolerance, humanitarian policy and due process of law. Panama would continue to guarantee the right to free passage to which all Panamanians were entitled.

15. Turning to question 18, he noted that, because the Panamanian legislature had considered the question of defamation to be related to the right to information, it had adopted Act No. 1 of 5 January 1998, which created a hierarchically superior, special jurisdiction for judges hearing defamation cases involving journalists, thus distinguishing them from judges hearing such cases between private individuals. Under that system, between 2005 and 2008, 69 journalists had been charged with defamation. Thus far, one person had been acquitted and there had been 12 trials, resulting in 17 provisional stays of proceedings and 7 permanent stays of proceedings. His delegation would provide statistics for other time periods if the Committee so wished.

16. **Ms. Rodríguez** (Panama) said that, under article 807 of the Panamanian Family Code, in order to secure the effective provision of child support (question 19), the court could order of its own motion and proceed with the direct debiting of th obligor's wages in favour of the beneficiary. If the employer responsible for effecting the direct debit or seizure failed to do so, that person was jointly liable for the obligation to provide support, without prejudice to any penalty he might incur for contempt of court. The court of first instance, acting either on its own motion or at a party's request, could sentence the obligor owing support for contempt of court for obstructive behaviour, such as evasion in bad faith of the support payment. Moreover, article 206 of the Criminal Code stated that any person who evaded his obligation to provide support could be sentenced to one to three years' imprisonment. With regard to measures taken to protect children who were the victims of failure to comply with child support obligations, the Ministry of Social Development provided guidance to families as to the appropriate legal channels available. Finally, support for children in residential homes and in care programmes could be obtained through the Department of Children and Adoptions.

17. Turning to question 20 on the list of issues, she drew attention to the adoption of Executive Decree No. 19 of 12 June 2006, listing dangerous types of employment, in an effort to combat the worst forms of child labour; domestic service in the homes of third persons came under that heading. The Ministry of Labour had established a division within the national department of labour inspection to detect and manage child labour situations. Furthermore, a national network of experts had been created to work in the detection and prevention of child labour. In terms of the current situation in Panama, 9.4 per cent of the working population between 5 and 17 years of age was engaged in domestic work; of that population, 17.9 per cent were indigenous boys and girls. A total of 47,976 children were engaged in some form of labour in Panama, with the proportion of male children employed higher than that of female children, and rural zones displaying higher numbers of child labourers than urban zones. The large majority of working children were employed during the day rather than at night, and working children were employed for an average of 26 hours per week, which was within the limits prescribed by law.

18. The Government of Panama was pursuing a multi-pronged strategy to deal with child labour. The Department of Children was implementing various schemes to prevent, manage and eradicate child labour, including street patrols, a hotline, and the Safe Steps Programme, which offered comprehensive services, including tutoring and counselling, tailored to the specific needs of children at risk and of their families. Under an agreement with private companies to develop a policy of corporate social responsibility, the ASSA insurance company was providing annual scholarships for the education of children, thereby ensuring that their social and academic progress was not disrupted. In addition, the Institute for the Training and Use of Human Resources had set up a project to eradicate child labour by providing education grants to children at risk; in 2006 and 2007, a total of 2,174 and 2,852 scholarships, respectively, had been awarded. Moreover, the Ministry of Education had established multi-grade schools in border areas for primarily rural and indigenous populations and had thus been able to maintain 2,215 such students in the educational system in 2006 and 2007. Another problem engendered by child labour was illiteracy. Some 3,056 children between the ages of 6 and 17 years of age had been identified by the Government's social protection programmes as not having been incorporated into the educational system; those children were now being attended through a literacy campaign and would eventually be fully integrated into the system.

19. **Mr. Caballero** (Panama), in answer to question 21, said that, following its ratification of the Convention against Transnational Organized Crime, Panama had incorporated the necessary standards into its internal laws. Article 177 of the Criminal Code, for instance, provided for a prison sentence of four to six years for anyone who in any way facilitated the entry into or departure from or the movement within the country of a person of either sex in order to force that person to engage in illegal paid sexual activity or sexual slavery. Penalties were considerably harsher for similar crimes involving minors. The law did not address the use of visas for the sexual exploitation of immigrants, but since any person who contracted foreign persons to work in Panama was forbidden from retaining those persons' personal documents, there was already a control mechanism in place for such practices. The new Panamanian Migration Act allowed any foreign persons entering Panama to change their migratory category in accordance with the migration

laws and also provided for other migratory categories. People working in Panama on visas were obliged to report periodically to the Immigration Service, which also facilitated identification of victims of trafficking. When such victims were identified, the law empowered the Immigration Service to establish prevention and protection measures. Furthermore, the national department responsible for attending to victims was empowered to wage educational campaigns to prevent future victims of trafficking. The law also encouraged international cooperation to prevent and combat trafficking and sexual exploitation through communication with the State and international agencies. Recently adopted Panamanian legislation specifically referred to trafficking and to the need to provide comprehensive attention to the victims of such crimes.

20. **Ms. Rodríguez** (Panama), referring to question 22 on the list of issues, said that various measures had been taken to improve the situation of indigenous peoples, including acts and decrees relating to the promotion of indigenous culture, languages and industries.

21. Regarding question 23, she said that a draft Framework Act existed that would provide for the protection of indigenous lands not yet legally safeguarded as *comarcas*. The adoption of a *comarcas* law was also currently being discussed with members of civil society. In fact, the Framework Act merely awarded the land to indigenous peoples through the procedures it established, but it did not mention the traditional authorities; furthermore, it was silent on education and the administration of justice. The Framework Act was useful in the case of collective lands, which were not contiguous, and for the Ngöbe. On the other hand, the *Comarcas* Law was the most acceptable solution for the Kunas of Darién, the Bribris and the Nasos on account of their social and cultural cohesion and the contiguity of their territory.

22. **Mr. Sandoval** (Panama), responding to question 24, said that, at the initiative of the Panamanian Government, a workshop had been held in summer 2006 on institutional awareness-raising and the drafting of reports for treaty bodies, as a result of the Government's concern over its considerable backlog in that respect. Panama understood the desirability of drafting reports jointly with representatives of civil society for reasons of objectivity; however, time constraints had prevented such a combined effort in the case of the third periodic report. It was based on information supplied and discussed by a team of civil servants who were experts in their field, with civil society concerns being conveyed through the Office of the Ombudsman. Panama undertook to seek ways of ensuring constructive participation by non-governmental organizations (NGOs) in the drafting of its future periodic reports, and in the meantime remained open to their concerns.

23. **Mr. Pérez Sánchez-Cerro** said that, while he welcomed the extensive information provided on the topic of child labour, he was concerned that Panama had not adopted legislation specifically criminalizing child sexual exploitation; it was unclear whether the revised Criminal Code would contain any provisions on the subject. Panama had not taken action as called for by the ILO Worst Forms of Child Labour Convention (No. 182), which specified that States must take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour. As the Family Code did not appear to expressly prohibit child trafficking, he wondered if a Code for Minors existed or if perhaps the new version of the Criminal Code included a chapter on the criminalization of child trafficking.

24. **Mr. Khalil** said that, while the right of peaceful assembly was recognized under the Constitution of Panama, it was not always protected in practice. No one condoned roadblocks and the destruction of property as a means of protest. However, although the State was entitled to regulate public demonstrations in the interest of public safety in accordance with article 21 of the Covenant, the restrictions imposed should not violate the right of peaceful assembly. Concerning question 18 on whether journalists had been charged with the offence of defamation, he still had concerns that libel laws could be used to curtail criticism of public figures and that journalists continued to be unjustly prosecuted. He also drew attention to paragraph 593 of the report, which spelled out clearly the problems which arose when parents failed to make child-support payments. The more than two-month period required to summon the delinquent party to court meant that many of the basic needs of the children in question were not met. He would appreciate more information on how the relevant legislation on child support was being applied. More details were needed of cases in which the parent in default was

unemployed and unable to make the necessary payments.

25. Noting the importance which the Government attached to the prohibition of the employment of children under the age of 14, as reflected in its written reply to question 20, he enquired whether the Court ruling of 30 November 1995 referred to on page 41 of the written replies to the list of issues (CCPR/C/PAN/Q/Add.1) had affected the provision in the Family Code allowing minors between the ages of 12 and 14 to carry out agricultural and domestic work. The Executive Decree of 12 June 2006 to combat the worst forms of child labour indicated that child labour continued to be a serious problem in Panama. He would be grateful for data on the number of women performing domestic work. It was not clear whether the wages they earned met their basic needs and whether they had any means of lodging complaints. Lastly, he commended the Government's approach to the education of children, which was the best way for developing countries such as Panama to break the vicious cycle of poverty.

26. **Mr. Johnson**, referring to question 21, enquired whether the authorities had conducted any investigations into the use of artists' visas for the trafficking and sexual exploitation of migrants. If so, it would be useful to know whether any culprits had been identified and what the penalties for such crimes were. Information was also needed on the place of origin of the so-called artists.

27. **Ms. Motoc** said that she would welcome details of Panama's efforts to promote the rights of persons with disabilities and how those efforts had affected indigenous people, many of whom were disabled. She wondered why it had not ratified ILO Convention No. 169 and whether there were any obstacles to doing so. She enquired whether there was a national body to coordinate and monitor implementation of the various regional policies concerning indigenous peoples. There was also a need to consult with and obtain the free, prior and informed consent of such peoples on major projects affecting them, such as hydroelectric dams. Clarification was needed on NGO reports of indigenous people being evicted from their lands. More information on Government policy towards the more disadvantaged indigenous communities such as the Naso would also be helpful.

28. **Mr. Lallah** said that the Government was not doing enough to promote the interests of the indigenous peoples. The report itself acknowledged that the resources made available by the State were not sufficient to meet the basic needs of the ethnic groups in question. It was important even for a country with limited resources to give its most vulnerable citizens priority attention. Indigenous communities were among the most disadvantaged. Peoples such as the Naso and others had been greatly affected by public works and construction projects. The harm caused to them could not be reversed. Residential tourism in indigenous areas was also very detrimental to the way of life of the inhabitants. Mining activities such as those in Los Santos also irreversibly destroyed the environment and the local lifestyle.

29. **Ms. Palm** said, with respect to the right of women to have access, on general terms of equality, to public service in the country, that despite legislation establishing a 30 per cent obligatory quota for women's participation in lists of candidates to party offices, in appointments to the Cabinet and in the management of autonomous and semi-autonomous bodies, the goal was far from being reached. Currently, there were only three women Ministers out of 15 Ministers. There were eight male judges and one female judge of the Supreme Court. Other examples could be cited. She wondered what action the State party had taken to fill the quota, including any affirmative measures to promote true equality between men and women. Women were discriminated against in the labour market in various ways. Wages were higher among male workers than female workers for equal work. Clarification was also needed on reports that during interviews for employment women were routinely requested to take pregnancy tests. That practice amounted to unlawful interference in a woman's family life and privacy, in violation of article 17 of the Covenant. Women were thus excluded from the labour market.

30. She was also concerned about reports that there had been an increase in the number of cases of domestic or family violence against women in Panama in 2007. In many of those cases, the women had been killed by their ex-partners. It seemed that women were afraid to lodge complaints against their aggressors, as they were ignored or mistreated by the police. When they had filed complaints, the existing mechanisms for their protection had proved insufficient. Many women

had been killed after denouncing their abusers. She would appreciate information on the specific measures which the State party had taken to combat domestic violence. For example, statistical data on the number of prosecutions carried out and persons convicted as well as the penalties incurred would be helpful. There was also a lack of shelters for battered women. The only existing State shelter provided inadequate protection and its conditions were said to be so deplorable that women preferred not to make use of it. The Office of the Ombudsman had also called for the establishment of more shelters. She enquired whether the Government planned to open new shelters and improve the conditions of the existing one.

31. **Mr. Amor** said that the delegation's replies to the Committee's questions were frank, detailed and useful. Child labour was a cause of concern. He enquired about the enrolment rate of children, particularly among indigenous children, and whether school enrolment was mandatory and up to what age. Child labour often involved domestic work. Such work, even for adults, was often akin to slavery within the meaning of article 8 of the Covenant. Although the Government had made efforts to address the problem through surveillance and inspection, it had not taken robust measures to protect the rights of the children concerned and domestic workers in general.

32. Concerning the reference in the report (para. 501) to Christian morality and the recognition of Catholicism as the religion practised by the majority of Panamanians, the fact that a religion was recognized as a state religion or that its followers comprised the majority of the population posed no problems as long as minority religions were respected and the rights of believers and non-believers alike were observed. The introduction of the notion of Christian morality, however, complicated matters. As the Committee had concluded in its general comment No. 22, the concept of morals derived from many social, philosophical and religious traditions and should not be based exclusively on a single religious tradition. To subject the freedom of religion to a limitation consisting of respect for Christian morality could create the perception among members of religious minorities or non-believers that they were discriminated against.

33. **Mr. Glélé Ahanhanzo** said that many States parties faced persistent and thorny problems in the area of guaranteeing respect for the rights of indigenous peoples. He would therefore be grateful for information about the specific measures taken by the Government to assist indigenous people, who were among the most vulnerable members of society, to exercise their rights and to be recognized as equals by their fellow citizens.

The meeting was suspended at 12.20 p.m. and resumed at 12.30 p.m.

34. **Mr. Gómez** (Panama) said that the new Criminal Code, which would enter into force in May 2008, defined unlawful conduct relating to the corruption and commercial exploitation of minors, including child pornography, sexual slavery and sex tourism, and set out the corresponding penalties. Individuals found to have collaborated with those convicted of such offences were subject to prosecution, as were persons who were aware of those activities but failed to report them to the competent authorities. Act No. 40 of 1999 established the system of adolescent criminal responsibility.

35. In response to the questions put by Mr. Khalil, he said that the right to freedom of peaceful assembly was enshrined in the Constitution. However, demonstrations and protests that interfered with the rights of third parties, in particular their freedom of movement, were unlawful because they contravened constitutional provisions relating to the protection of citizens' physical integrity and property. Indeed, recent protests in Panama had culminated in a number of fatalities and the Public Prosecutor's Department had therefore opened an investigation into those events. As far as defamation was concerned, the new Criminal Code stipulated that discussing or criticizing the actions of public officials did not constitute an offence.

36. On the issue of discrimination against women, Act No. 38 of 2001 set out a series of measures to be taken by the administrative and judicial authorities to protect women from domestic violence. They included the issuance of provisional arrest warrants for alleged perpetrators, the removal of either the victim or the perpetrator from the family home and the suspension of the alleged aggressor's child custody and/or visiting rights. Panama had also acceded to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. As a result of training initiatives and awareness-raising campaigns, the number of complaints concerning domestic violence submitted to the relevant authorities had increased significantly, from 9,020 in 2005 to 13,992 in 2006.

37. **Ms. Rodríguez** (Panama) said that, in addition to ratifying a number of international instruments relating to the suppression of sexual exploitation of minors and adopting domestic legislation criminalizing such practices, Panama had developed a set of guidelines on protection and victim support and implemented a strategy designed to ensure that those responsible for investigating alleged incidents treated under-age victims appropriately. Under the new Criminal Code, anyone found guilty of selling children would be sentenced to between 5 and 10 years' imprisonment; longer prison terms were applicable if the sale was for the purpose of sexual exploitation, forced labour, slavery or organ removal.

38. In 2000, Panama had acceded to ILO Convention No. 182, which obliged States, inter alia, to take the measures necessary to prohibit and eliminate all forms of work likely to harm the health, safety or morals of children, including domestic work. Furthermore, following a Supreme Court ruling handed down in November 1995, article 716 of the Family Code, pursuant to which children between 12 and 14 years of age were permitted to engage in domestic work, had been declared unconstitutional. That article had therefore been repealed.

39. Poverty was one of the main causes of child labour in Panama, where, according to statistics from 2003, 50 per cent of children lived below the poverty line. Aware of the need for a comprehensive and holistic approach to the problem, the Government had launched the *Red de oportunidades* (Opportunities' Network) programme, which was designed to provide tailored assistance and support to disadvantaged segments of the population, including persons with disabilities, indigenous persons and persons living in extreme poverty. As part of that programme, 30,000 indigenous children had been vaccinated against a range of communicable diseases and preschool educational services for indigenous communities had been extended.

40. Lastly, with regard to child support, relevant legislation empowered the courts to issue payment orders to parents who failed to honour their responsibilities in that area. Such orders could be issued the day after the first missed payment.

41. **The Chairperson** thanked the State party for its report and written replies and for its willingness to enter into a constructive dialogue with the Committee. While the Panamanian authorities should be commended for their efforts to strengthen the domestic legal framework, the enactment of new legislation was not enough to guarantee respect for the provisions of the Covenant. In that connection, future periodic reports should contain more detailed information, including statistical data, on the situation on the ground.

42. In order to raise awareness of the Covenant and ensure more widespread respect for its provisions, the courts should refer to it more regularly in their rulings rather than viewing it as merely a guide. Furthermore, with the aim of improving the functioning of the judicial branch, the State party should pursue its intention to introduce an accusatory system. While certainly not a panacea for all ills, the adoption of such a system would reduce the backlog of unheard cases, thereby decreasing the likelihood of impunity.

43. The Committee would continue to follow with interest the measures taken by the State party to protect the rights of indigenous people and members of other minority groups, and he urged the authorities to pursue their efforts to address the problems connected with child labour. Lastly, he stressed the risks associated with the criminalization of homosexual activity, particularly since such a stance could lead to discriminatory practices that ran counter to the letter and spirit of the Covenant.

44. **Mr. Castillero Correa** (Panama) said that additional written replies to the Committee's follow-up questions would be provided. He expressed regret that members of civil society had not been more involved in the preparation of the third periodic report and pledged to ensure that future reports would take account of their valuable contribution to the debate on civil and political rights. In closing, he promised that future reports would be submitted to the Committee in a more timely manner.

The meeting rose at 1 p.m.